IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 415 (SS) of 2005

Gopal Singh,
S/o late Sri Nandan Singh,
R/o Village – Basti,
P.O. – Sangarh,
District – Bageshwar. **… Petitioner.**

Versus

1. Union of India through Defence Secretary, New Delhi.
2. Record Officer, EME Record, Secundrabad, Andhra Pradesh.

….Respondents.

Hon'ble M.M. Ghildiyal, J

Heard Sri D.N. Sharma, holding brief of Sri M.S. Pal, learned counsel for the petitioner and Sri Vikas Pandey, holding brief of Sri Pradeep Joshi, learned Standing Counsel for Union of India on behalf of respondents.

By means of this writ petition, the petitioner has prayed for the following reliefs:

i. To issue a writ, order or direction in the nature of Mandamus directing the respondents to release the disability pension to the petitioner on the basis of medical grounds.

ii. To issue a writ, order or direction in the nature of Mandamus directing the respondents to give effect and operation to the recommendation dated 01.07.2000 (Annexure 2) of the respondent no. 2.

iii. To issue any other writ order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

iv. Award the cost of this writ petition to the petitioner.

The facts of the case are that petitioner was enrolled on 27.12.1984 and discharged with effect from 31.12.1999. At the time of discharge from the service petitioner was placed in low medical category BEEE (Permanent) due to disability "NASO BRONCHIAL ALLERGY". Petitioner was brought before Released Medical Board (RMB) on 14.06.1999 and the Board held that disability of the petitioner was aggravated on military services, due to cold climate conditions, dust, smoke and pollution and was assessed at 20% for two years. Consequently, petitioner was discharged from service and vide order dated 27.09.1999 pensionary benefit was provided to the petitioner such as Service Pension for life with effect from 01.12.2000 along with gratuity of Rs. 56,199/- and commutation of Rs 1,41,742/-.

Since the decision of RMB is recommendatory in nature and can be reviewed by the competent medical authority. The disability pension of the petitioner was rejected by the Medical Advisor (Pension) after reviewing the findings of RMB and reassessed the disability of the petitioner at 11% to 14% for five years.

Counter affidavit has been filed by the respondents. Paragraph 7 of the counter affidavit it quoted as under:

"That the rejection of the disability pension claim of the petitioner was communicated to him vide EME records letter no. 14550186/DP – 5/ Pen dated 6 Sep, 2000 with an advice to prefer an appeal within six months, if aggrieved. However, the petitioner did not prefer any appeal against the rejection of his disability pension claim. For grant of his disability pension beyond 1st Jan, 2005, the petitioner was brought before Resurvey Medical Board (RSMB) which

reassessed his disability at 11 to 14% to life. As per pension regulation in vogue, disability assessed below 20% by Resurvey Medical Board is final for life. This fact was also communicated to the petitioner vide letter no. 14550186/RA-8A dated 06.01.2004 with an advice to request for fresh medical board, if aggrieved. However, no such request for fresh medical board was received from the petitioner."

The stand taken by the respondents is that petitioner had alternative remedy to apply for fresh Medical Board, however, he has not applied for fresh Medical Board till date.

Learned counsel for the respondents has submitted that order of reassessing the disability was passed on 06.01.2005 and within six months petitioner had opportunity to apply for fresh reassessment before fresh Medical Board and in stead of applying before fresh Medical Board he has preferred this writ petition.

Since the petitioner has chosen wrong forum, I deem it fit and proper to dispose of the writ petition with a direction to the petitioner to apply for reassessment before fresh Medical Board with a request to the competent authority to condone the delay under the Rules especially on the ground that due to ill advice he has chosen wrong forum and authority concerned shall take necessary action on the representation of the petitioner for reassessment before fresh Medical Board in accordance with law.

With this direction, the writ petition is finally disposed of. No order as to costs.

(M.M. Ghildiyal, J)

December 2, 2006
SKSharma